

EXECUTIVE SUMMARY

In 2013, the Commonwealth finds itself in a crisis of conscience. This crisis has been building slowly. In response the Eminent Persons Group (EPG) was created in 2009 “to build a stronger, more resilient and progressive Commonwealth and make it relevant to its times and people in the future”. Several of the EPG’s recommendations were put in place between the 2011 and 2013 biennial Heads of State meetings. A Commonwealth Charter consolidating the Heads of Governments’ commitment to human rights was adopted, the Secretary-General’s Good Offices role was strengthened and the mandate of the Commonwealth Ministerial Action Group (CMAG) was enhanced. However, the EPG’s recommendation to appoint a Commissioner for Democracy, the Rule of Law and Human Rights was dropped because Member States could not reach a consensus on how to respond to this recommendation.

In the interim, since 2011, human rights standards in the Commonwealth continue to be a cause for alarm. Countries that should be on CMAG’s watch list have got a free pass and those that ought to be on CMAG’s agenda have been assisted in avoiding accountability for past actions. There has never been a greater need for an independent expert to better advise Commonwealth mechanisms on human rights issues.

Despite the EPG prompted reform efforts; Commonwealth mechanisms continue to be insufficient for responding to human rights violations. Since the reforms, CMAG’s potential has remained unfulfilled and it continues to interpret its mandate narrowly – choosing to focus on threats to democracy – to the exclusion of human rights issues. Moreover, the need for a politically neutral independent advisor to CMAG was made apparent recently when the Secretary-General withheld legal opinions on the impeachment of the Sri Lankan Chief Justice from CMAG – The Commonwealth’s mechanism mandated to respond when Commonwealth values are threatened. This demonstrated a lack of cooperation which will cripple the Commonwealth’s ability to uphold its values. The Secretary-General, in practice, remains largely unaccountable and his approach to behind the scenes diplomacy has allowed human rights abusers to repeatedly violate Commonwealth values while the Commonwealth looks on silently. This conflict between quiet diplomacy and the need to denounce human rights violations has not been addressed by the reform process. The Human Rights Unit (HRU), the only Commonwealth body dedicated exclusively to addressing human rights on a full-time basis is mandated to both *promote* and *protect* human rights within all Commonwealth Member States. The HRU however, does not have the capacity or capability to monitor or investigate human rights abuses and in its work continues to be captive to the political currents of the Secretariat.

In sum, the Commonwealth has not been able to hold its Member States to their collective core human rights commitments because its current mechanisms are not adequate for protecting human rights and it does not use the mechanisms it has to optimum effect. Experience shows that in the absence of an independent entity able to keep human rights under review the promise of the new Charter, adopted in December 2012, will remain unfulfilled.

Despite the evident necessity for a Commonwealth Commissioner for Human Rights, several unmeritorious arguments have blocked its creation, hindering the operationalisation of the

Charter. One objection was that the Commonwealth should focus on development rather than human rights. In fact, human rights and development are inextricably linked. Sustainable development – that does not exacerbate inequality and marginalisation – can only flourish in countries where human rights are protected. By applying a rights-based approach to development, a Commissioner would enhance the development goals of the Commonwealth.

Another argument against the creation of a Commissioner is that it would create financial burdens for the Commonwealth. However, the benefits of a Commissioner, in terms of reputation, visibility and effectiveness far outweigh any cost implications.

Moreover, some States have also contended that establishing a Commissioner would provide an excuse for interference in the domestic affairs of a State. It is now well established that when governments oppress their people, the sovereignty versus outside interference argument has no legitimacy. Add to this the fact that when States join an international association that has values they open themselves up to being questioned about those values and it becomes apparent that a Commissioner would by no means illegitimately interfere in domestic affairs.

A further objection to a Commissioner was that it would be a duplication of the functions of the Secretary-General and CMAG. The Commonwealth Human Rights Initiative calls for the establishment of a Commonwealth Commissioner for Human Rights, who would not be a replication of what is already present in the Commonwealth but a much needed complement that will help the Commonwealth live up to its new Charter. A Commonwealth Commissioner would be a full-time specialist, independent from the Commonwealth Secretariat and equipped with suitable infrastructure and a mandate that would enable review of a Member State's human rights compliance. Such a mechanism would reduce the onerous responsibilities the reform process placed upon the Secretary-General, enabling him to focus on his core functions. A Commissioner mandated to monitor and investigate human rights abuses would have the expertise and facilities to ensure that CMAG was given an early warning of human rights violations and would also advise on the range of options available to CMAG in order to positively affect country situations.

In this manner, a Commissioner entrusted to provide politically neutral country information would facilitate the adoption of transparent procedures and would make obvious the Commonwealth's commitment to human rights and thereby the inherent dignity of its citizens. This would in turn lend to reviving the relevance of the Commonwealth to its people and to the international community. Moreover, a Commonwealth Human Rights Commissioner who can be easily accessed by, and communicate with, citizens of the Commonwealth would go some way to addressing the isolation of the Commonwealth from its people.

The hosting of CHOGM in Sri Lanka, a country the United Nations High Commissioner for Human Rights has described as "heading in an increasingly authoritarian direction", has led to a credibility crisis regarding the Commonwealth's response to human rights abuse in the first year of the Charter's existence. The Commonwealth must counter this by demonstrating that it has the will and machinery to fiercely protect its values. At a time of global financial crisis and widespread growing demand for people's participation in their own democracies, the Commonwealth needs to assure itself of the financial support of member governments. Vitally important for this is the belief of the citizens of those countries in the organisation's relevance to their lives. Without a Commissioner to aid the coming alive of Commonwealth values in people's lives, this appears unattainable.